



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: FOP - 175475

PRELIMINARY RECITALS

Pursuant to a petition filed on July 11, 2016, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services regarding FoodShare benefits (FS), a hearing was held on August 9, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether Milwaukee Enrollment Services (the agency) correctly determined that the Petitioner was overpaid FoodShare benefits in the amount of \$4,626.00 for the period of August 1, 2015 through January 31, 2016.

NOTE: The record was held open until August 15, 2016, to give the Petitioner an opportunity to supplement the record. On August 11, 2016, the Division of Hearings and Appeals received:

- Exhibit 4: A May to June 2016 bank statement for a bank account belonging to [REDACTED]
- Exhibit 5: A transaction history for a joint bank account.
- Exhibit 6: A January to February 2016 bank statement for a joint account.
- Exhibit 7: a December 2015 to January 2016 bank statement for a joint account
- Exhibit 8: a November to December 2015 bank statement for a joint account
- Exhibit 9: a September to October 2015 bank statement for a joint account
- Exhibit 10: an August to September 2015 bank statement for a joint account
- Exhibit 11: an August 9, 2016 letter from Petitioner
- Exhibit 12: a consignor settlement report dated August 9, 2016.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: [REDACTED] HSPC, Sr.
 Milwaukee Enrollment Services
 1220 W. Vliet St.
 Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:
 Mayumi M. Ishii
 Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner's ex-husband, and father of her three children, lived with the Petitioner off and on between July 2015 and January 31, 2016, though he would disappear periodically due to his recurring substance abuse issues. (Testimony of Petitioner)
3. On July 6, 2015, the Petitioner completed an ACCESS Six Month Report Form in which she reported [REDACTED], as being in her home. The Petitioner reported no household income. (Exhibit 2, pgs. 37-43)
4. On July 17, 2015, the agency sent the Petitioner a notice that her household of five would be receiving \$771 per month in FoodShare benefits, based upon a report of no income. (Exhibit 2, pgs. 48-52)
5. A State Wage Match indicated that in 2015 [REDACTED] had 2nd Quarter (April, May, June) earnings of \$24,999.99. He earned the same amount during the 3rd and 4th quarters of 2015. Then, during the first quarter of 2016 [REDACTED] received \$22,242.41 in income. (Exhibit 2, pg. 21)
6. [REDACTED] did not receive income in the month of August 2015. (Exhibit 29)
7. A 2015 W-2 for [REDACTED] indicated he had total gross earnings of \$74,999.97. (Exhibit 2, pg. 23 and pg.33)
8. [REDACTED] had his own, separate bank account. (Exhibit 4)
9. Petitioner and [REDACTED] also had a joint account. [REDACTED]'s salary was not deposited into the joint account between August 21, 2015 and February 19, 2016. (Exhibits 6-10)
10. On June 22, 2016, the agency sent the Petitioner a FoodShare Overpayment Notice, claim # [REDACTED], alleging that the Petitioner was overpaid benefits in the amount of \$4,626.00 for the period of August 1, 2015, through January 31, 2015. (Exhibit 2, pgs. 64-75)
11. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on July 11, 2016. (Exhibit 1)

DISCUSSION

Petitioner argues that the agency erred in its overpayment determination, because [REDACTED]'s income was deposited into an account, to which she did not have access. Petitioner argues, that it was, therefore, unavailable to her.

However, the question is not whether the income was available to her, personally, but whether the income was available to the group.

Eligibility and benefit calculations are based on prospectively budgeted monthly income using estimated amounts. *FSH §4.1.1* “Only include income actually **available to the group.**” *Id.*, *Emphasis added.*

A FoodShare group is, “formed by persons who are in the same food unit and pass all the individual non-financial criteria. *FSH §3.3.1.1* The FoodShare assistance group receives the benefit.”

However, parents and their children who live together must be included in the same food unit, even if they do not purchase and prepare meals together. *7 C.F.R. § 273.1(b)(1); FSH § 3.3.1.3* As such, [REDACTED] needed to be included in Petitioner’s food unit/group.

Because [REDACTED] was part of the Petitioner’s FoodShare group, any income available to him, is considered available to the group. Consequently, his income needed to be considered in determining Petitioner’s eligibility for FoodShare benefits.

To be categorically eligible, most FoodShare groups must have income at or below 200% of the Federal Poverty Level (FPL). *FoodShare Wisconsin Handbook (FSH) §4.2.1.1; 7 CFR 273.2(j)(2).*

200% of FPL for an assistance group of 5 was \$4,652 per month between 10/17/14 and 9/27/15; after that date it went up to \$4736 per month. *FSH §8.1.1.1*

The best information we have in the record concerning [REDACTED] income is the state wage match and his W-2. According to that information, from March 2015 through December 2015, [REDACTED] received an average of \$8,333.33 per month in income (\$24,999.99 / 3 months or \$74,999.97 / 9 months) and from January 2016 through March 2016, [REDACTED] received an average of \$7,414.14 per month in income (\$22,242.41 / 3 months). Thus, the income available to the Petitioner’s FoodShare group exceeded the 200% FPL income limit of \$4,736 per month and she was not eligible for benefits from July 2015 through January 2016.

I note that [REDACTED] did not receive income in August 2015. However, if income fluctuates such that a 30-day period cannot provide an accurate indication of income, the agency may average income. *FSH §1.2.4.2* Here, it would not be accurate to say the Petitioner’s group was impoverished and unable to meet its nutritional needs in August 2015, when [REDACTED] was earning \$24,999.99 a quarter. Under such circumstances, it is appropriate to average income pursuant to *FSH §1.2.4.2.*

The Petitioner argues that it is not fair to hold her accountable for an overpayment of benefits when she did not control whether [REDACTED] shared his earnings with the household. Petitioner’s argument is based in equity. However, the Division of Hearings and Appeals does not possess equitable powers. *See, e.g., Wisconsin Socialist Workers 1976 Campaign Committee v. McCann*, 433 F. Supp. 540, 545 (E.D. Wis. 1977). It must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions. Policy cannot be ignored or reversed where not in conflict with the law. Applied here, the Division of Hearings and Appeals must follow the regulatory scheme just outlined and uphold the agency’s overpayment determination.

CONCLUSIONS OF LAW

The agency correctly determined that the Petitioner was overpaid FoodShare benefits in the amount of \$4,626.00 for the period of August 1, 2015 through January 31, 2016.

THEREFORE, it is

ORDERED

The petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 2nd day of September, 2016

\s _____
Mayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on September 2, 2016.

Milwaukee Enrollment Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability